



**Upper Tribunal
(Immigration and Asylum Chamber)
(V)**

Appeal Number: HU/05320/2020

THE IMMIGRATION ACTS

**Heard at Field House
Via Skype For Business
On 16th December 2021**

**Decision & Reasons
Promulgated
On 23rd December 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MRS AR RANGANATHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer

For the Respondent: Mr R De Mello, instructed by Kings Law Solicitors Ltd

DECISION AND REASONS

1. The appellant appealed with permission against the determination of First-tier Tribunal ("FtT") Judge Mehta promulgated on 20th April 2021.
2. FtT Judge Mehta allowed the appeal both on human rights grounds and under the EEA Regulations.
3. The appellant is a citizen of India born on 10th March 1971. The appellant is married and in a genuine and subsisting relationship, has

had leave to remain since 25th February 2008 and is the primary carer of her son who is a British citizen.

4. She appealed to the First-tier Tribunal (“the FtT”) under Section 84(c) of the Nationality, Immigration and Asylum Act 2002 against a decision of the Secretary of State dated 17th March 2020 refusing her human rights claim following a decision to make a deportation order with reference the automatic deportation provisions under the Borders Act 2007. The appellant had been convicted at Oxford Crown Court of causing death by dangerous driving and sentenced to 30 months imprisonment.
5. The Secretary of State appealed and permission to appeal was granted on the basis that first, it was arguable that the judge erred in failing to appreciate that Section 79(3) of the Nationality Immigration and Asylum Act 2002 (“the 2002 Act”) provides that a deportation order does not, with reference to orders made pursuant to Section 32(5) of the 2002 Act, invalidate leave whilst an appeal is pending. Hence the appellant was an “exempt person” under the Regulation 16 of the EEA Regs (“the EEA Regulations”) and thus the appellant could not meet the requirements of the EEA Regulations and her appeal should not have been allowed under those regulations.
6. The second ground was also found to be arguable in that the judge had imported considerations in relation to the EEA Regulations into the reasoning in relation to Section 117C assessment and failed to consider the issue of citizenship properly.
7. Mr Deller at the hearing initially submitted that the mechanism to engage an appeal both on human rights grounds, in terms of Section 117C and under the EEA Regulations was not transparent.
8. At the error of law hearing before me Mr De Mello made submissions first, in relation to the judge’s the approach to the EEA regulations. He submitted the proper order of approach was to consider the EEA Regulations and then the Section 117C provisions. He pointed out that the appellant had raised and relied on Zambrano [2011] EUECJ C-34 in response to a Section 120 notice to the Secretary of State and in her grounds of appeal to the FtT. The matter was in issue and not a new ground. It should be noted that under the transitional provisions the EEA Regulations still applied to this appeal and there was no argument to the contrary.
9. Mr de Mello further placed reliance on **S v Secretary of State for the Home Department** (C-304/14) which had considered the Zambrano point such that the appellant’s child would be deprived of the genuine enjoyment of the substance of the rights which his status as a Union citizen conferred upon him at that time should his mother be removed.

10. In **S v Secretary of State for the Home Department**, the CJEU considered the lawfulness of national legislation (the UK Borders Act 2007) obliging the deportation of third country nationals with a criminal convictions which would result in the indirect expulsion of a dependent Union citizen child. **S v Secretary of State for the Home Department** held that where an expulsion decision was founded on the existence of a genuine present and sufficiently serious threat to the requirements of public policy or security, in view of the of the criminal offences committed by a third country national being the sole carer of a Union citizen child, that decision *could* be consistent with EU law. However, as per paragraph 41, that conclusion could not be drawn automatically on the basis of the criminal record and there must be a specific assessment by the national court of all the current and relevant circumstances of the case in the light of the principle of proportionality, of the child's best interests and of fundamental rights.
11. At the close of oral submissions Mr Deller conceded that the appeal had been properly allowed on the very specific facts of this case which included that the appellant was the primary carer of a British citizen child. He accepted that if the deportation order proceeded at the time any leave would be withdrawn, the appellant would no longer be exempt and could then raise the 'shield' of **Zambrano**.
12. In effect Mr Deller withdrew the challenge to the FtT decision and was content on the particular facts of this case that the appeal should remain allowed.
13. The challenge having been withdrawn the FtT decision will stand. There is no longer any appeal before the Upper Tribunal.
- 14. Mrs Ranganathan's appeal remains allowed.**

Signed Helen Rimington

Date 20th December 2021.

Upper Tribunal Judge Rimington